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**FILED**

JAN 20 2015

Federal Maritime Commission  
Office of the Secretary

**BEFORE THE  
FEDERAL MARITIME COMMISSION**

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**DOCKET NO. 14 -10**

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**ECONOCARIBE CONSOLIDATORS, INC.**

**COMPLAINANT**

**V.**

**AMOY INTERNATIONAL, LLC.**

**RESPONDENT**

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**RESPONDENT'S OBJECTIONS TO THE  
AFFIDAVIT OF JOHN KAMADA**

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**I. INTRODUCTION**

Respondent Amoy International, LLC ("Amoy"), hereby objects to the Affidavit Declaration of John Kamada filed in support of Complainant's Motion for Partial Summary Judgment.

An affidavit is a substitute for oral testimony, and therefore must conform

to the same requirements of competency as would be applicable if the declarant were to testify at trial. F.R.E. 601-02: Travelers Cas. & Sur. Co. of America v. Telstar Constr. Co., Inc., 252 F. Sup. 2d 917, 922, 923 (D. Az. 2003). It is not enough for the declarant simply to state that he or she has personal knowledge of the facts asserted. Rather, the declaration must contain facts showing the declarant's connection with the matter stated therein and establishing his or her personal knowledge of the facts alleged and the source of his or her information. Taylor v. List, 880 F.2d 1040, 1045 (9<sup>th</sup> Cir 1989). Opinion testimony may be offered, but only if an adequate foundation for the declarant's knowledge and the basis of his or her opinion has first been established. F.R.E. 701. All declarations must be made by witnesses having personal knowledge of the facts stated therein and must state facts that would be admissible in evidence (rather than, for example, the declarant's unfounded personal opinions or conclusions). F.R.C.P. 56(e); W. Schwarzer, A. Tashima, J. Wagstaffe, Practice Guide: Federal Civil Procedure Before Trial (Nat. Ed.), § 12:57 at page 12-16 (The Rutter Group 2014).

Testimony with a proper foundation based on personal knowledge must be based upon what the witness directly saw, heard, perceived, or otherwise

experienced with his own senses. See Fed. R. Evid. 602 and Adv. Comm. Notes (1972). Moreover, a mere summary of a writing is not the best evidence to prove the content of a writing, and must be excluded. See Fed. R. Evid. 1002.

Documentary evidence may be offered, but it must first be properly authenticated by a declarant with personal knowledge of the document's genuineness and execution. Hal Roach Studios, Inc. v. Richard Feiner & Co., 896 F.2d 1542, 1555 (9<sup>th</sup> Cir. 1990).

Of course the most basic element of admissibility is relevance. While “[n]ot all relevant evidence is admissible” (Advisory Committee Notes to F.R.E. 402), all irrelevant evidence is inadmissible. F.R.E. 402. Evidence is only relevant if it has a tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable that it would be without the evidence. See Fed. R. Evid. 401.

**II. SPECIFIC OBJECTIONS TO JOHN KAMADA'S**

**AFFIDAVIT IN SUPPORT OF PLAINTIFF'S MOTION FOR**

**PARTIAL SUMMARY JUDGMENT**

<b>Material Objected To:</b>	<b>Grounds for Objections:</b>	<b>Ruling on the Objection</b>
1. Kamada declaration ¶5, pg.2. "In fact, the cargo was baled used truck tires, which we knew after the cargo arrived in China and was inspected by the Chinese Customs."	1. Lacks foundation (F.R.E. §602); hearsay (F.R.E. §§ 801, 802). Kamada fails to establish his personnel knowledge that he knew the cargo was baled tires after its arrival in China or that the cargo was inspected by Chinese Customs. Kamada has not stated that he was in China when the containers arrived to personally know these facts. Stating that the matters are true and correct based on his personnel knowledge or review of the records [see ¶16 of his declaration] is insufficient. <u>See</u> authorities cited in the Introduction.	Sustained: _____  Overruled: _____

<p>2. Kamada Declaration, ¶8. "The arrival date was June 17, 2013. On or about that date Chinese Customs opened the containers for inspection, and found that the contents were in fact goods prohibited entry into China, i.e. baled used truck tires. It seized the four containers from Maersk Line, the importing carrier, and Maersk's notification of this fact then went to Econocaribe and Amoy."</p>	<p>2. Lacks foundation (F.R.E. §602); hearsay (F.R.E. §§ 801, 802). Kamada fails to establish his personnel knowledge that he knew that the cargo arrived on June 17, 2013; that Chinese Customs opened the containers on or about that date; that the content were found to be goods prohibited entry into China; that Chinese Customs seized the four containers; and that Maersk notified Econocaribe and Amoy of "this fact." Kamada has not stated that he was in China when the containers arrived to personally know these facts. Stating that the matters are true and correct based on his personnel knowledge or review of the records [see ¶16 of his declaration] is insufficient. <u>See</u> authorities cited in the Introduction.</p>	<p>Sustained: _____</p> <p>Overruled: _____</p>
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<p>3. Kamada Declaration, ¶10. "On July 9, 2013 Maersk informed Econocaribe that the consignee Victory China denied interest in the cargo, and that Amoy needed to nominate another shipper for the return bill of lading. Econocaribe immediately forwarded this information to Amoy."</p>	<p>3. Lacks foundation (F.R.E. §602); hearsay (F.R.E. § 801, 802). This paragraph appears to be based on Exhibit "H" to Complainant's Motion, an email from Maersk dated July 9, 2013. See "Undisputed Fact" no. 13, pg 5 of 16 of Complainant's Motion. Exhibit "H" does not state that "Amoy needed to nominate another shipper for the return bill of lading." The closest wording is "Pls urgently inform shipper accordingly and advise if they need to find new cnee to help them return issue." "Pls make sure shipper as cargo owner be informed the longstanding. They need to push CNEE arrange cargo delivery ASAP." Thess wordings, whatever they mean, do not support this paragraph, but confirm that it is hearsay.</p>	<p>Sustained: _____</p> <p>Overruled: _____</p>
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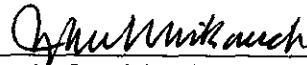
<p>4. Kamada Declaration, ¶11.  “On or about June 30, 2014,  Chinese Customs released the  four containers with the  condition that it be shipped  back to its country of origin.”</p>	<p>3. Lacks foundation  (F.R.E. §602); hearsay  (F.R.E. § 801, 802).  Kamada fails to establish  his personnel knowledge  that he knew that the  cargo was released on or  about arrived on June  30,2014; that Chinese  Customs released the  four containers with the  condition that they be  ship back to their country  of origin. Kamada has  not stated that he was in  China at this time to  personally know these  facts. Stating that the  matters are true and  correct based on his  personnel knowledge or  review of the records  [see ¶16 of his  declaration] is  insufficient. <u>See</u>  authorities cited in the  Introduction.</p>	<p>Sustained: _____  Overruled: _____</p>
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Respectfully submitted,

Dated: January 19, 2015

RUSSELL, MIRKOVICH & MORROW

By:



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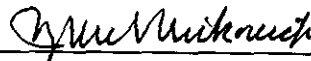


**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing **RESPONDENT'S**  
**OBJECTIONS TO THE AFFIDAVIT OF JOHN KAMADA** was sent to the  
below-mentioned counsel via email on January 19, 2015.

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